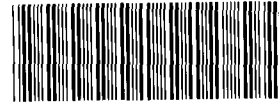


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## MEMORANDUM

DATE: February 7, 1996 5400.1

TO: L. E. Woods, Ecology, Bldg. T130C, X3378

FROM: *M.B. Murdock*  
M. B. Murdock, Ecology, Bldg. T893B, X3560

SUBJECT: STATUS OF THREATENED AND ENDANGERED SPECIES AT ROCKY FLATS  
ENVIRONMENTAL TECHNOLOGY SITE - MBM - 014 - 96

Attached is a status report on threatened and endangered species at Rocky Flats Environmental Technology Site. This final draft of "Status of Threatened and Endangered Species at Rocky Flats Environmental Technology Site" incorporates review comments from the earlier drafts, and is one of a series of ecological baseline summaries being prepared by the Natural Resource Compliance and Protection Program.

Should you have comments or require further information, please call me at extension 3560.

MBM:mbm

Attachment:  
As Stated

cc:  
C. S. Evans  
J. D. Krause  
ERPD Records File (2)



ADMIN RECCRD

BZ-A-000338

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## **STATUS OF THREATENED AND ENDANGERED SPECIES AT ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE**

### **Definition of Threatened and Endangered Species**

Threatened and endangered species are those plant or animal species listed under the **Endangered Species Act** (ESA) as threatened by or in danger of immediate extinction. These species receive stringent protection from harm under this Act and any DOE actions that may affect them are of concern. Species designated as at-risk are those species that are under consideration for listing as threatened or endangered. At-risk species may be listed at any time, therefore, at-risk species that live at the Site are of concern in project planning.

### **Current Threatened and Endangered Species Status**

Two Federally listed threatened or endangered species currently occur at the Site. Eleven additional at-risk species are also resident. At-risk species include candidates for Federal listing and species classified by the State of Colorado as "Species of Special Concern." Candidate species are of concern because their status may be changed to threatened or endangered at any time. If threatened or endangered species may be affected actions of a Federal agency consultation with the U. S. Fish and Wildlife Service is required under Section 7 of the Endangered Species Act .

#### **Federal Endangered Species**

American Peregrine Falcons, federally listed as an endangered species, are observed seasonally at the Site. A pair of Peregrine Falcons has nested in the Flatirons, a few miles to the northwest of the Site, for several years. This species uses the Buffer Zone as casual foraging range during the spring, summer, and fall. Bald Eagles are also currently listed as endangered. Bald Eagles have been observed hunting at the Site.

#### **Federal Threatened Species**

No federally listed threatened species are known to inhabit the Site. Appropriate habitat exists at the Site for Ute Ladies'-tresses, a threatened orchid species.

#### **Federal Candidate Species**

Eastern Short Horned Lizards occupy the xeric mixed grasslands and portions of the mesic mixed grasslands areas at the Site. Northern Goshawks and Baird's Sparrows are occasional visitors to the Site. Western Burrowing Owls have been observed in short grassland, mesic mixed grassland, and xeric mixed grassland. Ferruginous Hawks are fall and winter residents of the Site and the surrounding vicinity although no nesting of this species has been confirmed. Loggerhead Shrikes are suspected to breed in on-site shrublands and are most commonly observed where grasslands adjoin woodlands and shrublands. The Preble's Meadow Jumping Mouse is known to occupy riparian corridors and impoundment margins at the Site. More detailed information on this species is available in the Preble's Meadow Jumping Mouse and Other Small Mammals Summary Report. Areas, descriptions, and locations of plant communities in which at-risk species are found are discussed in detail in the Vegetation Summary Report, and illustrated on the Site Vegetation Map.

### **Colorado Species of Special Concern**

Forktip Threeawn, a grass species that is rare in Colorado, grows at one known location near the west-central boundary of the Site. Long-billed Curlews are casual visitors to wetlands and grasslands at the site during migration stop-overs. Greater Sandhill Cranes are observed in flight over the Site during spring and fall migrations, but have not been recorded on the ground. Grasslands and wetlands at the Site are likely to provide stopover habitat for cranes. American White Pelicans are frequently observed foraging and resting in several impoundments on the Site during the spring and summer seasons. Suitable nesting habitat does not exist at the Site.

### **Regulatory Issues**

The U. S. Fish and Wildlife Service administers the **Endangered Species Act** of 1973. The regulations within 50 CRF 14, 17, and 23 protect fish, wildlife, and plants listed as endangered and threatened from injury, harassment, and death (take). Species and their habitats are protected. The U. S. Fish and Wildlife Service also enforces the **Fish and Wildlife Coordination Act** of 1958, which requires consultation whenever the waters of any stream or other water body is altered by a Federal agency. Penalties for violation of the Endangered Species Act are severe, and include imprisonment and fines of up to **\$100,000** per person per act of violation. Penalties for violation of the Fish and Wildlife Coordination Act include up to a year of imprisonment and \$500 in fines per violation. These penalties apply to **individuals** as well as companies.

The Colorado Division of Wildlife administers the **Colorado Nongame, Threatened, and Endangered Species Act**, which protects State listed species in addition to all Federally listed species. Penalties for violations of other State wildlife protection laws can include fines for minor violations, compensation for damages, or fines up to tens of thousands of dollars for severe felony violations.

These laws do not necessarily prohibit activities that could affect habitat of threatened and endangered species, but do require consultation with the U. S. Fish and Wildlife Service prior to such activities. If the ecological consequences of a planned activity are too severe, the activity may be prohibited under the Endangered Species Act.

### **ASAP Issues**

#### **Regulatory**

- The areas to be affected by ASAP include wetlands, riparian habitats, ponds, and other habitats that harbor at-risk species. Off-site impacts may also occur. Proposed actions may require consultation with the U. S. Fish and Wildlife Service, and may also require negotiations with the Colorado Division of Wildlife.
- The DOE and the U. S. Fish and Wildlife Service must discuss any changes in the amount of water leaving the Site to assess the potential affect on threatened and endangered species in the lower Platte River.

#### **Natural Resource Damage Assessment Issues**

- Impacts to natural resources such as threatened and endangered species may result in a Natural Resource Damage claim against DOE. The rarity of these species could cause damage assessments to be correspondingly greater.
- DOE is a Natural Resource Trustee with responsibility for acting in the public interest regarding wildlife, plants, and their habitats.

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### **Future Land Use Compatibility**

- DOE may be required, as a result of consultation, to set land aside as a conservation area to protect at-risk species habitat. This could preclude other future land uses.
- Industrial land uses would need to comply with any mitigation or conservation agreements developed between DOE and the U. S. Fish and Wildlife Service and the Colorado Division of Wildlife.

### **Potential Obstructions**

- Listing of any candidate species currently found on the Site could unexpectedly delay the project until consultation with the U. S. Fish and Wildlife Service has been completed.
- After consultation with the U. S. Fish and Wildlife Service, and negotiations with the Colorado Division of Wildlife, a conservation agreement may require some revision to the project plan.

### **Time Critical Issues**

- Any actions that may affect the waters of the Site will require consultation with the U. S. Fish and Wildlife Service under the Endangered Species Act. Site ecologists should be involved in any project in the early planning stages to allow early identification of potential delays pertaining to the Endangered Species Act.
- During consultation, which may include development of a Biological Assessment, there must be no irreversible or irretrievable commitment of resources by DOE.
- Depending on the findings of the Biological Assessment and the response from the U. S. Fish and Wildlife Service (Biological Opinion), the project may be delayed up to 7 months.

### **Contamination**

- No contamination can be allowed to enter critical habitat or otherwise cause injury or death (take) to threatened or endangered species.
- Any project that might affect surface water or groundwater, either by depletion or by contamination must be evaluated for its potential to impact threatened or endangered species.

### **Other Project-Specific Issues**

In addition to the ASAP-specific issues listed above, other construction, cleanup, waste disposal, and restoration projects should consider the following compliance issues.

All Rocky Flats activities must be evaluated by a qualified ecologist for potential to impact threatened or endangered species or their habitat prior to the start of work. At a minimum, any outdoor work area must be surveyed for at-risk species in accordance with "Identification and Protection of Threatened, Endangered, and Special-Concern Species" (1-D06-EPR-END.03).

If a threatened or endangered species is found to be present at a work site, work cannot continue until consultation with the U. S. Fish and Wildlife Service has been completed. Ignorance of species presence, or of the law, is not considered to be a legally defensible excuse for violation of the Endangered Species Act. Due to the severe penalties for violation of the Endangered Species Act, and the lengthy process of consultation with the U. S. Fish and Wildlife Service, early identification of potential compliance problems is recommended.

### **Monitoring Recommendations**

All Rocky Flats work sites must be evaluated by a qualified ecologist for potential to impact threatened or endangered species or their habitat prior to the start of work at a planned site. Work site-specific surveys must be performed in accordance with the threatened and

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endangered species protection procedure (1-D06-EPR-END.03). Special monitoring before, during, and after a project may be required by the U. S. Fish and Wildlife Service where work will occur in critical habitat for these species.

### **Subject Matter Contacts**

DOE: John Stover, Kent Bracken  
KH: Larry Woods  
RMRS: Marcia Murdock

### **Regulators and Stakeholders with Significant Special Concern Species Interests**

- U. S. Fish and Wildlife Service (Resource management, enforce Endangered Species Act)
- Colorado Division of Wildlife (Resource management, Site Natural Resource Trustee, enforce State wildlife protection acts and Endangered Species Act)
- Biodiversity Legal Foundation (Special interest in at-risk species, has petitioned U. S. Fish and Wildlife Service to list several species)
- Colorado Natural Heritage Program/Nature Conservancy (Special interest in at-risk species and habitats)
- Jefferson County Nature Association (Special interest in at-risk species and habitats)
- Future Site Use Working Group (Special interest in Rocky Flats resource management)

### **Information Sources**

1994 Annual Wildlife Survey Report, Natural Resources Protection and Compliance Program.  
April 24, 1995.

Rocky Flats Environmental Technology Site, Ecological Monitoring Program 1995 Annual Report.  
May 31, 1995

Resource Protection Program Annual Wildlife Survey Report. April 29, 1994)

Ecological Monitoring Program Annual Report. January 21, 1994.

Baseline Biological Characterization of the Terrestrial and Aquatic Habitats at Rocky Flats Plant.  
September 1992.

Report of Findings Ute Ladies'-Tresses and Colorado Butterfly Weed Surveys. September 13, 1994.

Report of Findings Ute Ladies'-Tresses and Colorado Butterfly Weed Surveys. September 24, 1993.